

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 06, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VINCE C.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 4:20-CV-05213-JAG

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 18, 19. Attorney Chad Hatfield represents Vince C. (Plaintiff); Special Assistant United States Attorney Jaffrey Staples represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

I. JURISDICTION

Plaintiff filed an application for Supplemental Security Income on April 11, 2017, alleging disability beginning July 1, 2010¹, due to depression, anxiety, carpal

¹ At the hearing Plaintiff amended the alleged onset date to the protected filing date, April 11, 2017, for procedural purposes. Tr. 36.

1 tunnel syndrome, PTSD, cataracts, neuropathy in the extremities, and arthritis.
2 Tr. 70-71. The application was denied initially and upon reconsideration. Tr. 97-
3 105, 109-15. Administrative Law Judge (ALJ) Stewart Stallings held a hearing on
4 February 25, 2020, Tr. 33-68, and issued an unfavorable decision on March 23,
5 2020. Tr. 15-25. Plaintiff requested review by the Appeals Council and the
6 Appeals Council denied the request on August 31, 2020. Tr. 1-6. The ALJ's March
7 2020 decision became the final decision of the Commissioner, which is appealable
8 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for
9 judicial review on October 30, 2020. ECF No. 1.

10 **II. STATEMENT OF FACTS**

11 Plaintiff was born in 1963 and was 54 years old when he filed his
12 application for benefits. Tr. 70. He has a high school education and some college
13 courses, including training as a welder. Tr. 38. He last worked in a full-time
14 capacity in 2009, as a welder. Tr. 38, 57-58, 364. He has performed odd jobs and
15 handyman work over the years to support himself. Tr. 39-40, 443. He has alleged
16 an inability to work primarily based on cataracts and carpal tunnel syndrome, along
17 with mental health limitations. Tr. 40. He has had carpal tunnel release surgery on
18 both wrists and cataract extractions from both eyes. Tr. 297, 392, 536-37, 555.

19 **III. STANDARD OF REVIEW**

20 The ALJ is responsible for determining credibility, resolving conflicts in
21 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
22 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
23 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
24 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
25 only if it is not supported by substantial evidence or if it is based on legal error.
26 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
27 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
28 1098. Put another way, substantial evidence is such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

IV. SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show (1) the claimant can make an adjustment to other work; and (2) the claimant can perform specific jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an adjustment to other work in the national economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

V. ADMINISTRATIVE DECISION

On March 23, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 15-25.

1 At **step one**, the ALJ found Plaintiff had not engaged in substantial gainful
2 activity since the application date. Tr. 17.

3 At **step two**, the ALJ determined Plaintiff had the following severe
4 impairments: substance abuse, depression, anxiety, bilateral carpal tunnel
5 syndrome post-surgical release, and cataracts status-post surgery. *Id.*

6 At **step three**, the ALJ found Plaintiff did not have an impairment or
7 combination of impairments that met or medically equaled the severity of one of
8 the listed impairments. Tr. 18-19.

9 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
10 he could perform medium exertion work, with the following additional limitations:

11 [T]he claimant can occasionally handle and finger with the left
12 upper extremity and frequently handle and finger on the right.
13 No exposure to moving or dangerous machinery or unprotected
14 heights. No more than frequent use of close vision, as with a
15 computer screen. The claimant requires low stress work, no
16 production paced or conveyor belt-type tasks. The claimant
17 requires a predictable work setting, and can make occasional
18 simple workplace changes. No more than brief, superficial
interaction with the general public, and he must work in an
environment without a lot of people around.

19 Tr. 19.

20 At **step four**, the ALJ found Plaintiff was unable to perform his past relevant
21 work as a metal fabricator. Tr. 23.

22 At **step five**, the ALJ determined that, based on the testimony of the
23 vocational expert, and considering Plaintiff's age, education, work experience, and
24 RFC, Plaintiff could perform jobs that existed in significant numbers in the
25 national economy, including the jobs of janitor, floor attendant, and laundry
26 worker. Tr. 23-24.

1 The ALJ thus concluded Plaintiff was not under a disability within the
2 meaning of the Social Security Act at any time from the application date through
3 the date of the decision. Tr. 24-25.

4 VI. ISSUES

5 The question presented is whether substantial evidence supports the ALJ's
6 decision denying benefits and, if so, whether that decision is based on proper legal
7 standards.

8 Plaintiff contends the ALJ erred by: (1) improperly evaluating the medical
9 opinion evidence; (2) improperly rejecting PTSD as a severe impairment at step
10 two; (3) failing to find Plaintiff disabled at step three; (4) improperly rejecting
11 Plaintiff's subjective complaints; and (5) conducting an inadequate step five
12 analysis.

13 VII. DISCUSSION

14 A. Medical Opinion Evidence – Dr. Zimmerman.

15 Plaintiff argues the ALJ improperly disregarded the opinion from his
16 treating provider, Dr. Laurie Zimmerman. ECF No. 18 at 10-15.

17 For claims filed on or after March 27, 2017, new regulations apply that
18 change the framework for how an ALJ must weigh medical opinion evidence.
19 Revisions to Rules Regarding the Evaluation of Medical Evidence, 2017 WL
20 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new
21 regulations provide the ALJ will no longer give any specific evidentiary weight to
22 medical opinions or prior administrative medical findings, including those from
23 treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider
24 the persuasiveness of each medical opinion and prior administrative medical
25 finding, regardless of whether the medical source is an Acceptable Medical Source.
26 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors,
27 including supportability, consistency, the source's relationship with the claimant,
28 any specialization of the source, and other factors (such as the source's familiarity

1 with other evidence in the file or an understanding of Social Security’s disability
2 program). *Id.* The regulations make clear that the supportability and consistency of
3 an opinion are the most important factors, and the ALJ must articulate how they
4 considered those factors in determining the persuasiveness of each medical opinion
5 or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may
6 explain how they considered the other factors, but is not required to do so, except
7 in cases where two or more opinions are equally well-supported and consistent
8 with the record. *Id.*

9 Supportability and consistency are further explained in the regulations:

10 (1) Supportability. The more relevant the objective medical
11 evidence and supporting explanations presented by a medical
12 source are to support his or her medical opinion(s) or prior
13 administrative medical finding(s), the more persuasive the
14 medical opinions or prior administrative medical finding(s) will
be.

15 (2) Consistency. The more consistent a medical opinion(s) or
16 prior administrative medical finding(s) is with the evidence from
17 other medical sources and nonmedical sources in the claim, the
18 more persuasive the medical opinion(s) or prior administrative
19 medical finding(s) will be.

20 20 C.F.R. § 416.920c(c). The Ninth Circuit has additionally held that the new
21 regulatory framework displaces the longstanding case law requiring an ALJ to
22 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a
23 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.
24 2022).

25 Plaintiff’s mental health medication prescriber, Dr. Laurie Zimmerman,
26 completed a mental residual functional capacity assessment in December 2019.
27 Tr. 583-86. She opined Plaintiff had marked limitations in numerous work-related
28 functional categories, had marked impairment in interacting with others and

1 maintaining concentration, persistence, and pace, and predicted he would be off
2 task more than 30% of the time and miss four or more days per month from a full-
3 time job. *Id.*

4 The ALJ found this opinion was not persuasive, noting that while Plaintiff
5 had some symptoms of mental health impairments, he had otherwise performed
6 very well at his consultative exam. Tr. 22-23. The ALJ found those findings to be
7 inconsistent with Dr. Zimmerman's opinion, and further found that Dr.
8 Zimmerman had failed to offer adequate explanation or cite to the record in
9 support of her opinion. Tr. 23.

10 Plaintiff argues the ALJ's analysis was flawed, asserting it was unclear
11 whether the ALJ understood that the exam findings he cited to were from a
12 different doctor, and arguing the ALJ provided no nexus for his conclusory
13 determination that a treating doctor's opinion was inconsistent with Plaintiff's
14 performance at a single consultative exam. ECF No. 18 at 10-12. Plaintiff further
15 argues that Dr. Zimmerman's opinion is supported by and well-explained by her
16 treatment notes and the longitudinal record. *Id.* at 13-15. Defendant argues the ALJ
17 reasonably considered the amount of explanation the doctor provided and the lack
18 of support from the objective medical evidence in assessing the persuasiveness of
19 Dr. Zimmerman's opinion, and asserts that Plaintiff's discussion of the supportive
20 evidence is effectively a request to reweigh the evidence in his favor. ECF No. 19
21 at 9-11.

22 The Court finds the ALJ did not err. With respect to supportability, the ALJ
23 reasonably found the opinion lacking in explanation. Tr. 23. The only comment Dr.
24 Zimmerman offered was: "Diagnosis of PTSD and panic disorder with
25 agoraphobia." Tr. 586. The ALJ also discussed Dr. Zimmerman's treatment
26 records earlier in the decision, noting occasional exacerbation of mood issues, but
27 otherwise largely stable findings. Tr. 21-22. With respect to consistency, the ALJ
28 noted the relatively unremarkable findings at the consultative exam, finding them

1 inconsistent with the marked limitations set forth by Dr. Zimmerman. Tr. 22-23.
2 Thought Plaintiff offers an alternative interpretation of the mental health treatment
3 records, “when the evidence is susceptible to more than one rational interpretation,
4 we must uphold the ALJ’s findings if they are supported by inferences reasonably
5 drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

6 **B. Plaintiff’s Subjective Complaints.**

7 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without
8 providing adequate reasons. ECF No. 18 at 17-20.

9 It is the province of the ALJ to make determinations regarding a claimant’s
10 subjective reports. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
11 However, the ALJ’s findings must be supported by specific cogent reasons.
12 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative
13 evidence of malingering, the ALJ’s reasons for rejecting a claimant’s testimony
14 must be “specific, clear and convincing.” *Smolen v. Chater*, 80 F.3d 1273, 1281
15 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

16 The ALJ found Plaintiff’s medically determinable impairments could
17 reasonably be expected to cause the alleged symptoms; however, he found
18 Plaintiff’s statements concerning the intensity, persistence and limiting effects of
19 his symptoms were not entirely consistent with the medical evidence and other
20 evidence in the record. Tr. 20. Specifically, the ALJ found Plaintiff’s allegations to
21 be undermined by evidence of improvement in his conditions with treatment and
22 the fact that he was working and actively seeking out work. Tr. 20-22.

23 Plaintiff argues the ALJ improperly rejected his allegations based on the
24 waxing and waning of symptoms, and asserts that he did not engage in activities
25 that were inconsistent with his allegations. ECF No. 18 at 17-20. He further argues
26 the ALJ applied an impossibly high burden in finding Plaintiff’s part-time work to
27 be inconsistent with his claim of disability. Plaintiff alleges he is unable to
28 maintain regular and continuous employment, which is not inconsistent with the

1 sporadic work he performed while taking frequent breaks. *Id.* at 19. Finally, he
2 asserts that the record documents no improvement in his mental health conditions.
3 *Id.* at 20. Defendant argues the ALJ reasonably considered evidence that Plaintiff's
4 physical conditions improved with treatment and that his activities demonstrate
5 greater functional ability than alleged. ECF No. 19 at 3-6.

6 The Court finds the ALJ did not err. An ALJ may consider evidence of the
7 type and effectiveness of treatments received in assessing the reliability of a
8 claimant's symptom allegations. 20 C.F.R. § 416.929(c)(3); Social Security Ruling
9 16-3p. The ALJ noted Plaintiff's cataracts and carpal tunnel syndrome improved
10 following his various surgeries, contrary to his testimony that these conditions
11 continued to render him disabled. Tr. 20-22. While Plaintiff reported his primary
12 barriers to working included his vision and his carpal tunnel syndrome, the record
13 supports the ALJ's finding that Plaintiff's symptoms greatly improved with
14 treatment. Tr. 380, 396, 538-41, 556. The record contains no ongoing complaints
15 regarding these issues after the post-operative care. Evidence of medical treatment
16 successfully relieving symptoms can undermine a claim of disability. *Wellington v.*
17 *Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017). The ALJ's interpretation of the record
18 as undermining Plaintiff's testimony regarding ongoing problems is supported by
19 substantial evidence.

20 **C. Step Two.**

21 Plaintiff argues the ALJ erred in failing to find PTSD to be a severe
22 impairment at step two. ECF No. 18 at 20-21.

23 At step two of the sequential evaluation process, the ALJ must determine
24 whether the claimant has any medically determinable severe impairments. 20
25 C.F.R. § 416.920(a)(ii). An impairment is "not severe" if it does not "significantly
26 limit" the ability to conduct "basic work activities." 20 C.F.R. § 416.922(a). Basic
27 work activities are "abilities and aptitudes necessary to do most jobs." 20 C.F.R. §
28 416.922(b). "An impairment or combination of impairments can be found not

1 severe only if the evidence establishes a slight abnormality that has no more than a
2 minimal effect on an individual's ability to work." *Smolen v. Chater*, 80 F.3d 1273,
3 1290 (9th Cir. 1996) (internal quotation marks omitted). The claimant bears the
4 burden of demonstrating that an impairment is medically determinable and severe.
5 *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009).

6 The ALJ identified several severe impairments at step two, including
7 depression and anxiety, then found that all other impairments in the record
8 (including PTSD) were non-severe based on the evidence not indicating that they
9 caused significant limits for a twelve-month period. Tr. 17. However, the ALJ
10 indicated he considered all conditions in formulating the RFC, and included
11 various limitations regarding low stress work, simple changes, and limitations on
12 social interaction. Tr. 17, 19.

13 Plaintiff argues the ALJ erred by failing to find PTSD to be a severe
14 impairment, noting his trauma occurred in childhood and he exhibited symptoms
15 of the condition for the entire relevant period. ECF No. 18 at 15-16. Defendant
16 argues that any error was harmless, as the ALJ did not end the analysis at step two,
17 found Plaintiff had severe mental impairments, and considered all conditions in
18 formulating the RFC. ECF No. 19 at 2-3.

19 The Court finds the ALJ did not err. The step-two analysis is "a de minimis
20 screening device used to dispose of groundless claims." *Webb v. Barnhart*, 433
21 F.3d 683, 687 (9th Cir. 2005). Because the ALJ did not end the analysis at step
22 two, any error in the precise labeling of Plaintiff's mental health diagnoses is
23 harmless. Other than the limits assessed by Dr. Zimmerman, which the ALJ
24 appropriately found to be unpersuasive, Plaintiff has not identified any functional
25 limits stemming from PTSD that were not accounted for in the RFC. Therefore, the
26 ALJ did not err.

1 **D. Step Three.**

2 At step three of the sequential evaluation process, the ALJ considers whether
3 one or more of the claimant's impairments meets or equals an impairment listed in
4 Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 416.920(a)(4)(iii). Each
5 Listing sets forth the "symptoms, signs, and laboratory findings" which must be
6 established for a claimant's impairment to meet the Listing. *Tackett v. Apfel*, 180
7 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a Listing, the
8 claimant is considered disabled without further inquiry. 20 C.F.R. § 416.920(d).

9 Plaintiff argues the ALJ erred in failing to find Plaintiff's mental conditions
10 to meet or equal one of the 12.00 Listings, based on Dr. Zimmerman's assessment
11 of marked impairment in two of the B criteria. ECF No. 18 at 17. Because the
12 Court finds the ALJ did not err in his assessment of Dr. Zimmerman's opinion,
13 Plaintiff's argument is without merit.

14 **E. Step Five.**

15 Plaintiff argues the ALJ's step five findings were insufficient due to a
16 conflict between the RFC and the job requirements as noted in the Dictionary of
17 Occupational Titles, with respect to the handling requirements. ECF No. 18
18 at 20-21.

19 When there is a conflict between the testimony of a vocational expert (VE)
20 and evidence contained in the Dictionary of Occupational titles, the adjudicator
21 must elicit a reasonable explanation for the conflict before relying on the VE's
22 testimony and must reconcile the inconsistency. *Lamear v. Covlvin*, 865 F.3d 1201,
23 1206 (9th Cir. 2017); Social Security Ruling 00-4p. The ALJ complied with this
24 requirement. At the hearing, the ALJ and Plaintiff's representative questioned the
25 VE as to a worker's ability to perform the identified jobs while only using his non-
26 dominant hand for one-third of the day, and the VE testified extensively about how
27 the jobs would still be performable. Tr. 58-65. The ALJ acknowledged this
28 discrepancy and the VE's testimony in the decision. Tr. 24. The ALJ did not err.

1 Plaintiff's remaining argument, that the ALJ posed an incomplete
2 hypothetical to the VE, is premised on successfully showing that the ALJ erred in
3 his treatment of the symptom statements and medical opinions. ECF No. 18 at 21.
4 Because the Court finds that the ALJ did not harmfully err in his treatment of
5 Plaintiff's symptom statements and the medical evidence, Plaintiff's argument is
6 without merit.

7 **VIII. CONCLUSION**

8 The Court has reviewed the record and the ALJ's findings and the Court
9 finds the ALJ's decision is supported by substantial evidence and free of legal
10 error. Therefore, **IT IS HEREBY ORDERED:**

11 1. Defendant's Motion for Summary Judgment, **ECF No. 19**, is
12 **GRANTED.**

13 2. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is **DENIED.**

14 The District Court Executive is directed to file this Order and provide a copy
15 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
16 and the file shall be **CLOSED.**

17 DATED September 6, 2022.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE